

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL

No. 1881

**Introduced by Committee on Revenue and Taxation (Senators
Cedillo (Chair), Alpert, Bowen, and Burton)**

February 26, 2004

An act to amend ~~and renumber Section 6480.3 of Sections 6459 and 6480.1 of, to amend and renumber Section 6480.3 of, and to repeal Section 6451.5 of,~~ the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1881, as amended, Committee on Revenue and Taxation. Sales and use tax: *prepayments: extensions: due dates: exemption certificate.*

The Sales and Use Tax Law requires suppliers and wholesalers of motor vehicle fuel, aircraft jet fuel, and diesel fuel to collect a prepayment of sales tax based upon 80% of the combined state and local sales tax rate established by specified provisions of law.

This bill would include the sales tax rate established by recently enacted provisions of law within the provisions upon which the prepayments are based.

The Sales and Use Tax Law allows the State Board of Equalization for good cause to extend the time for making any return or paying any amount required to be paid under that law by certain taxpayers who are unpaid creditors of the state. That law provides that any extension shall expire no later than the last day of the month in which the state budget is adopted or one month from the due date of the return, whichever is later.

This bill would provide that the extension shall expire no later than the last day of the month following the month in which the state budget

is adopted or one month from the due date of the return, whichever is later.

The Sales and Use Tax Law requires that the use taxes imposed by that law with respect to the storage, use, or other consumption in this state of tangible personal property are due and payable by the purchaser on or before the 15th day of the 4th month following the taxable year, as defined, in which the storage, use, or consumption of the property first becomes taxable.

This bill would delete redundant provisions relating thereto.

The Sales and Use Tax Law authorizes a qualified person, as defined, to issue an exemption certificate to a seller of diesel fuel with respect to certain diesel fuel that is exempt from sales and use tax.

This bill would make a technical, nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION. 1. *Section 6451.5 of the Revenue and Taxation*
2 *Code is repealed.*

3 ~~6451.5. (a) Notwithstanding Section 6451, the use taxes~~
4 ~~imposed by this part with respect to the storage, use, or other~~
5 ~~consumption in this state of tangible personal property are due and~~
6 ~~payable by the purchaser on or before the 15th day of the fourth~~
7 ~~month following the taxable year in which the storage, use, or~~
8 ~~other consumption of the property first becomes taxable.~~

9 ~~(b) For purposes of this section, “taxable year” means the~~
10 ~~calendar year or the fiscal year upon the basis of which the taxable~~
11 ~~income is computed pursuant to the Personal Income Tax Law~~
12 ~~(Part 10 (commencing with Section 17001)) or the Corporation~~
13 ~~Tax Law (Part 11 (commencing with Section 23001)). If no fiscal~~
14 ~~year has been established, “taxable year” means the calendar year.~~

15 ~~(c) This section does not apply to a person who is otherwise~~
16 ~~required to hold a seller’s permit or to register with the board~~
17 ~~pursuant to this part, or to any person with purchases subject to use~~
18 ~~tax that exceed ten thousand dollars (\$10,000) during any calendar~~
19 ~~quarter of the taxable year for which the return is filed.~~

~~(d) This section shall not apply to use tax due from the sale of, or the storage, use, or other consumption in this state of the following:~~

~~(1) Use tax that applies to a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code.~~

~~(2) Use tax that applies to a vessel or aircraft, as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.~~

~~(3) Use tax that applies to a vehicle required to be registered under the Vehicle Code, a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or to a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.~~

~~(4) Use tax imposed on a lessee of tangible personal property.~~

SEC. 2. Section 6459 of the Revenue and Taxation Code is amended to read:

6459. (a) The board for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment.

(b) The board may grant an extension for more than one month if both of the following conditions occur:

(1) A budget for the state has not been adopted by July 1.

(2) The person requesting the extension is a creditor of the state who has not been paid because of the state's failure to timely adopt a budget.

Any extension granted under this subdivision shall expire no later than the last day of the month *following the month* in which the budget is adopted or one month from the due date of the return or payment, whichever comes later.

Any person to whom an extension has been granted under this subdivision shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment. However, no interest shall be due on that portion of the payment equivalent to the amount due to the person from the state on the due date of the payment.

SEC. 3. Section 6480.1 of the Revenue and Taxation Code is amended to read:

6480.1. (a) At any time that motor vehicle fuel tax or diesel fuel tax is imposed or would be imposed, but for the dyed diesel fuel exemption in paragraph (1) of subdivision (a) of Section 60100, or the train operator exemption in paragraph (7) of subdivision (a) of Section 60100 or paragraph (11) of subdivision (a) of Section 7401, or, pursuant to subdivision (f) of Section 6480, would be deemed to be imposed, on any removal, entry, or sale in this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. However, if no sale occurs at the time of imposition of motor vehicle fuel tax or diesel fuel tax, the supplier shall prepay the retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel fuel. The prepayment required to be collected by the supplier constitutes a debt owed by the supplier to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a supplier or wholesaler who has consumed the fuel has paid the use tax to the board. Each supplier shall report and pay the prepayment amounts to the board, in a form as prescribed by the board, in the period in which the fuel is sold. On each subsequent sale of that fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of sale. Each supplier shall provide his or her purchaser with an invoice for, or other evidence of, the collection of the prepayment amounts which shall be separately stated thereon.

(b) (1) A wholesaler shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. Each wholesaler shall provide his or her

1 purchaser with an invoice for or other evidence of the collection
2 of the prepayment amounts, which shall be separately stated
3 thereon.

4 (2) Each wholesaler shall report to the board, in a form as
5 prescribed by the board and for the period in which the motor
6 vehicle fuel, aircraft jet fuel, or diesel fuel was sold, all of the
7 following:

8 (A) The number of gallons of fuel sold and the amount of sales
9 tax prepayments collected by the wholesaler.

10 (B) The number of tax-paid gallons purchased and the amount
11 of sales tax prepayments made by the wholesaler.

12 (C) In the event that the amount of sales tax prepayments
13 collected by the wholesaler is greater than the amount of sales tax
14 prepayments made by the wholesaler, then the excess constitutes
15 a debt owed by the wholesaler to the state until paid to the board,
16 or until satisfactory proof has been submitted that the retailer of the
17 fuel has paid the tax to the board.

18 (c) A supplier or wholesaler who pays the prepayment and
19 issues a resale certificate to the seller, but subsequently consumes
20 the motor vehicle fuel, aircraft jet fuel, or diesel fuel, shall be
21 entitled to a credit against his or her sales and use taxes due and
22 payable for the period in which the prepayment was made,
23 provided that he or she reports and pays the use tax to the board on
24 the consumption of that fuel.

25 (d) The amount of a prepayment paid by the retailer or a
26 supplier or wholesaler who has consumed the motor vehicle fuel,
27 aircraft jet fuel, or diesel fuel to the seller from whom he or she
28 acquired the fuel shall constitute a credit against his or her sales
29 and use taxes due and payable for the period in which the sale was
30 made. Failure of the supplier or wholesaler to report prepayments
31 or the supplier's or wholesaler's failure to comply with any other
32 duty under this article shall not constitute grounds for denial of the
33 credit to the retailer, supplier, or wholesaler, either on a temporary
34 or permanent basis or otherwise. To be entitled to the credit, the
35 retailer, supplier, or wholesaler shall retain for inspection by the
36 board any receipts, invoices, or other documents showing the
37 amount of sales tax prepaid to his or her supplier, together with the
38 evidence of payment.

39 (e) The rate of the prepayment required to be collected during
40 the period from July 1, 1986, through March 31, 1987, shall be

1 four cents (\$0.04) per gallon of motor vehicle fuel distributed or
2 transferred.

3 (f) On April 1 of each succeeding year, the prepayment rate per
4 gallon for motor vehicle fuel, rounded to the nearest one-half of
5 one cent (\$0.005), of the required prepayment shall be established
6 by the board based upon 80 percent of the combined state and local
7 sales tax rate established by Sections 6051, 6051.2, 6051.3, ~~and~~
8 *6051.5, 7202, and 7203.1*, and Section 35 of Article XIII of the
9 California Constitution on the arithmetic average selling price
10 (excluding sales tax) as determined by the State Energy Resources
11 Conservation and Development Commission, in its latest
12 publication of the "Quarterly Oil Report," of all grades of
13 gasoline sold through a self-service gasoline station. In the event
14 the "Quarterly Oil Report" is delayed or discontinued, the board
15 may base its determination on other sources of the arithmetic
16 average selling price of gasoline. The board shall make its
17 determination of the rate no later than November 1 of the year prior
18 to the effective date of the new rate. Immediately upon making its
19 determination and setting of the rate, the board shall each year, no
20 later than January 1, notify by mail every supplier, wholesaler, and
21 retailer of motor vehicle fuel. In the event the price of fuel
22 decreases or increases, and the established rate results in
23 prepayments which consistently exceed or are significantly lower
24 than the retailers' sales tax liability, the board may readjust the
25 rate.

26 (g) On April 1 of each succeeding year, the prepayment rate per
27 gallon for aircraft jet fuel rounded to the nearest one-half of one
28 cent (\$0.005), shall be established by the board based upon 80
29 percent of the combined state and local sales tax rate established
30 by Sections 6051, 6051.2, 6051.3, *6051.5, 7202, and 7203.1*, and
31 Section 35 of Article XIII of the California Constitution on the
32 arithmetic average selling price (excluding sales and state excise
33 tax) as determined by the board. The board shall make its
34 determination of the rate no later than November 1 of the year prior
35 to the effective date of the new rate. The rate of the prepayment
36 required to be collected for aircraft jet fuel shall be equal to 80
37 percent of the arithmetic average selling price of aircraft jet fuel
38 as specified by industry publications. Immediately upon making
39 its determination and setting of the rate, the board shall each year,
40 no later than January 1, notify by mail every supplier, wholesaler,

1 and retailer of aircraft jet fuel. In the event the price of aircraft jet
2 fuel decreases or increases, and the established rate results in
3 prepayments that consistently exceed or are significantly lower
4 than the retailers' sales tax liability, the board may readjust the
5 rate.

6 (h) On April 1 of each succeeding year, the prepayment rate per
7 gallon for diesel fuel rounded to the nearest one-half of one cent
8 (\$0.005), shall be established by the board based upon 80 percent
9 of the combined state and local sales tax rate established by
10 Sections 6051, 6051.2, 6051.3, *6051.5*, 7202, and 7203.1, and
11 Section 35 of Article XIII of the California Constitution on the
12 arithmetic average selling price (excluding sales and state excise
13 tax) as determined by the board. The board shall make its
14 determination of the rate no later than November 1 of the year prior
15 to the effective date of the new rate. The rate of the prepayment
16 required to be collected for diesel fuel shall be equal to 80 percent
17 of the arithmetic average selling price of diesel fuel as specified by
18 industry publications. Immediately upon making its determination
19 and setting of the rate, the board shall each year, no later than
20 January 1, notify by mail every supplier, wholesaler, and retailer
21 of diesel fuel. In the event the price of diesel fuel decreases or
22 increases, and the established rate results in prepayments that
23 consistently exceed or are significantly lower than the retailers'
24 sales tax liability, the board may readjust the rate.

25 (i) (1) Notwithstanding any other provision of this section,
26 motor vehicle fuel sold by a supplier or wholesaler to a qualified
27 purchaser who, pursuant to a contract with the State of California
28 or its instrumentalities, resells that fuel to the State of California
29 or its instrumentalities shall be exempt from the prepayment
30 requirements.

31 (2) A qualified purchaser who acquires motor vehicle fuel for
32 subsequent resale to the State of California or its instrumentalities
33 pursuant to this subdivision shall furnish to the supplier or
34 wholesaler from whom the fuel is acquired an exemption
35 certificate, completed in accordance with any instructions or
36 regulations as the board may prescribe. The supplier or wholesaler
37 shall retain the certificate in his or her records in support of the
38 exemption. To qualify for the prepayment exemption, both of the
39 following conditions shall apply:

1 (A) The qualified purchaser does not take possession of the fuel
2 at any time.

3 (B) The fuel is delivered into storage tanks owned or leased by
4 the State of California or its instrumentalities via facilities of the
5 supplier or wholesaler, or by common or contract carriers under
6 contract with the supplier or wholesaler.

7 (3) For purposes of this subdivision, “qualified purchaser”
8 means a wholesaler who does not have or maintain a storage
9 facility or facilities for the purpose of selling motor vehicle fuel.

10 *SEC. 4.* Section 6480.3 of the Revenue and Taxation Code, as
11 added by Chapter 446 of the Statutes of 2002, is amended and
12 renumbered to read:

13 6480.9. (a) A person qualified under subdivision (b) may
14 issue a certificate to a seller with respect to the amount of sales tax
15 required to be prepaid pursuant to Section 6480.1 when purchasing
16 diesel fuel from the seller. The certificate shall be completed in
17 accordance with any instructions or regulations as the board may
18 prescribe, and shall clearly specify that the person will purchase
19 the volume of diesel fuel that the person reasonably expects he or
20 she will sell that qualifies for the exemption under Section 6357.1.
21 A seller that receives a properly completed certificate from a
22 person qualified under subdivision (b) shall not be required to
23 collect the prepayment of the retail sales tax otherwise required in
24 Section 6480.1 on that volume of the diesel fuel sold pursuant to
25 the certificate.

26 (b) A person is qualified for purposes of this section if both of
27 the following conditions are met:

28 (1) The person sold diesel fuel that was used by the consumer
29 in a manner that qualified, or would have qualified for an
30 exemption under Section 6357.1, and in the prior year, those sales
31 totaled more than 25 percent of the person’s total taxable sales.

32 (2) The person’s sales consist primarily of either bulk
33 deliveries of fuel or of fuel sales through a cardlock, keylock, or
34 other unattended mechanism, or both. For purposes of the
35 preceding sentence, “bulk deliveries” means transfers of fuel into
36 storage tanks of 500 gallons or more.

37 (c) A person issuing a certificate pursuant to this section is
38 liable for sales tax that is imposed under the Bradley-Burns
39 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
40 with Section 7200)) or in accordance with the Transactions and

1 Use Tax Law (Part 1.6 (commencing with Section 7251)) and sales
2 tax that is imposed under Section 6051.2 or 6201.2, or under
3 Section 35 of Article XIII of the California Constitution.

4 (d) A person issuing a certificate pursuant to this section shall
5 be liable for sales tax on any portion of the gross receipts derived
6 from the sale of fuel that is not sold in a manner that qualifies for
7 an exemption under Section 6357.1.

8 (e) A person liable for the sales tax under subdivision (c) or (d)
9 of this section shall report and pay that sales tax with the return for
10 the reporting period in which the person sells the fuel.

11 (f) Any person who gives a certificate pursuant to this section
12 for purchases of diesel fuel that he or she knows at the time of
13 purchase do not qualify for the exemption from the prepayment
14 pursuant to this section for the purpose of evading payment of the
15 prepayment of the retail sales tax is guilty of a misdemeanor
16 punishable as provided in Section 7153. In addition, the person
17 shall be liable to the state for a penalty of one thousand dollars
18 (\$1,000) for each certificate issued for personal gain or to evade
19 the payment of taxes.

